IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL LODGING NO.337 OF 2006
IN
NOTICE OF MOTION NO.263 OF 2006
IN
SUMMARY SUIT NO.1626 OF 2003

Shri Vijay M. Thakker.....Appellant
Vs.
Narendra J. Rajani & Ors..Respondents

Mr. C.N. Chavan, for the Appellant.
Mr. Sandeep Parikh i/b.Shantilal & Co., for the respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 28th April,2006

P.C.:

. The present Appeal is directed against the order dated 1st February, 2006 whereby the learned Judge has refused to set aside the decree passed in the suit under Order 37 on the ground that special circumstances have not bee made out by the appellant herein.

2. It is the case of the appellant that there was sufficient cause for non-appearance as though the postman had come to his house, his wife did not refuse to accept the service. It is, therefore, submitted that there was no proper service on the appellant herein. In so far as the merits of the matter is concerned, it must be pointed out that to make out special circumstances the learned Counsel has drawn our attention to the complaint filed by the Respondent against one M/s.Venus Finance and M/s.Manubhai Thakker & Associates of which the appellant was a partner. Reliance was placed on the document of M/s.Manubhai Thakker and Associates of

the assessment year 2000-2001 which under the name of the respondent shows only an amount of Rs.1,80,000/- as due and received. It is, therefore, submitted that the appellant having made out both the case of sufficient cause and special circumstances the Appeal ought to be allowed.

2. On the other hand on behalf of the respondents learned Counsel points out that the letter of confirmation dated 30th May, 2000 is signed on behalf of the partnership by one of the partners which clearly acknowledges that a sum of Rs.14,34,500/- had been received from respondent herein. It also shows that the last interest was paid on 25th May, 2000.

3. Considering the rival controversies and in order to enable the appellant to file his appearance in our opinion the ends of justice will be met if the appellant herein is directed to deposit a sum of Rs.14,34,50/- within a period of eight weeks from today. On such deposit the impugned order dated 1st February, 2006 stands set aside. The Appellant will be allowed to file his appearance and the respondent thereafter can take out proceedings for leave to defend according to law. On failure by the appellant herein to deposit the said amount the appeal stands dismissed.

4. For a period of eight weeks from today the

respondents are directed not to take steps to execute the decree. It will be open to the parties to move the learned single Judge for direction as to the amount deposited. It is made clear that the stay of execution is only against the appellant before this Court and not in respect of the parties who are not before this Court.

(F.I.REBELLO, J.)

(ANOOP V. MOHTA, J)